morton, 98 U. S. 61. Nor could a judgment be questioned collaterally for fraud at common law. *Nelson v. Felsing,* 32 App. D. C. 420. However, equity will grant relief by setting aside a judgment obtained by fraud, where the fraud was extrinsic to the matter on which the judgment was rendered. *French v. Raymond,* 82 Vt. 156; *Graves v. Graves,* 132 Iowa 199.

WITNESSES—IMPEACHMENT—RIGHT TO IMPEACH.—PEOPLE V. DEMARTINI, 107 N. E. (N. Y.) 501.—Where, in a prosecution for homicide, the main question was defendant's identity, and the state introduced witnesses on such issue whose testimony was destroyed on cross-examination, although this testimony was a surprise, it was *held* error to permit the state to impeach them by proving that they had identified accused as the murderer both at the police station and in their testimony before the coroner. Miller and Cardozo, JJ., *dissenting.*

As a general rule a party may not introduce evidence to prove his own witness at different times made declarations at variance with his testimony. *Cox v. Eayres,* 55 Vt. 24; *Chamberlain v. Sands,* 27 Me. 458. But most of the cases make an exception where a party is surprised by the testimony of his witness. *Moore v. Railroad Co.,* 59 Miss. 243; *Harlburt v. Bellows,* 50 N. H. 105. In Massachusetts, however, a rigid exclusionary rule was adhered to (*Adams v. Wheeler,* 13 Gray 67), until the rule was changed by statute. Revised Laws, 1902, c. 175 sec. 24. In Connecticut it is held that it is within the court's discretion to allow the party to interrogate his witness as to former inconsistent statements. *Appeal of Carpenter,* 74 Conn. 431. But a third party can not be called for this purpose. *Wheeler v. Thomas,* 67 Conn. 577. In *Ballard v. Pearsall,* 53 N. Y. 230, there was a ruling similar to the last case. An exception on the ground of surprise was conceded in *Coulter v. Express Co.,* 56 N. Y. 585, but the New York law was definitely settled in accord with the ruling of the principal case in *Becker v. Koch,* 104 N. Y. 394. The weight of authority is contrary to this view, some cases holding that a party may impeach his witness in any way except as to bad character. *White v. State,* 10 Tex. App. 381; *Owens v. State,* 46 Tex. Cr. R. 14. The theory of the cases that admit such testimony qualifiedly is differently expressed. New York goes on the theory of "probing recollection." *Ballard v. Pearsall, supra.* But in general it seems to be because the rule of absolute exclusion works badly, and in the states where the rule has not been relaxed by judicial construction it has been changed by statute.